



January 21, 2013

Via email: lcjc@sen.parl.gc.ca

The Honourable Bob Runciman, Senator
Chair, Senate Committee on Legal and Constitutional Affairs
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Senator Runciman,

Re: Bill C-37, *Criminal Code* amendments (*Increasing Offenders' Accountability for Victims Act*)

The National Criminal Justice Section and the National Aboriginal Law Section (CBA Sections) of the Canadian Bar Association appreciate the opportunity to comment on Bill C-37, *Criminal Code* amendments (*Increasing Offenders' Accountability for Victims Act*.) The CBA is a national association of over 37,000 lawyers, notaries, law students and academics, and our mandate includes seeking improvement in the law and the administration of justice. The National Criminal Justice Section consists of criminal law experts, including a balance of prosecutors and defence lawyers from across Canada. The National Aboriginal Law Section is comprised of experts in Aboriginal law from all regions of the country.

The CBA Sections support the use of victim surcharges, money collected through sentencing for *Criminal Code* and *Controlled Drug and Substances Act* offences. Programs funded through these surcharges can assist victims of crime by, for example, providing useful counseling services or aiding them in understanding the justice system and the court process.

Under section 737 of the *Criminal Code*, sentencing judges are required to impose a 15% victim surcharge, in addition to any fine imposed. This may be increased if the judge considers it appropriate, and if the offender is able to pay a greater amount. If no fine is ordered, a sentencing judge can impose a \$50 surcharge for summary matters and \$100 for indictable matters. Importantly, victim fine surcharges can be waived at sentencing if the offender satisfies the court that a fine would cause undue hardship to the offender or that person's dependents. A judge must provide reasons if the surcharge is waived.

Once imposed, the fine surcharge *cannot* be satisfied through a "fine option" program. Bill C-37 would remove that prohibition, which is a positive change we support. However, the Bill would double victim surcharges. Fine surcharges would go from 15% to 30%, and when a fine is not imposed the victim surcharge would increase from \$50 to \$100 for summary matters, and from \$100 to \$200 for indictable matters. For many offenders, this increase will represent a serious hardship for them and their families.

Removing Judges' Discretion

The Bill would also repeal sections 737(5) and (6) of the *Criminal Code*. It would remove the discretion a judge now has to waive a victim surcharge in appropriate cases, where it would cause undue hardship to the offenders or their dependents by imposing it. Instead, all offenders would have to pay "victim surcharges", even if undue hardship would result. It is essential to a fair justice system that judges retain discretion to consider the individual circumstances of the offender and their ability to pay the fine. Removing judicial discretion to waive the fine is likely to result in an increase in defaults.

The proposed amendments would produce results that are contrary to fundamental principles of sentencing in terms of allowing judges to tailor penalties to individual offenders and offences.

Impact on Vulnerable Canadians

Bill C-37 would unfairly impact already poor, marginalized and vulnerable people. Many people end up in trouble with the criminal law because of poverty, mental illness or cognitive disabilities, and will be unable to pay even a modest sum.

Mandatory financial penalties ignore an individual's circumstances at the time of sentencing. Non-payment may result in serious additional consequences, for example, loss of a driver's license (and potentially employment if dependent upon driving), civil collection processes and even possibly incarceration.

Aboriginal Offenders

Aboriginal offenders are grossly disproportionately represented among Canada's offender and inmate populations. Aboriginal persons also comprise a disproportionate percentage of Canadians who live in poverty. Doubling the victim fine surcharge and removing judicial discretion to waive it will exacerbate and compound well recognized problems in terms of Canada's treatment of its Aboriginal people. It would also prevent judges from considering the unique circumstances of Aboriginal offenders.¹

In our view, the proposed changes to increase victim fine surcharges beyond the reach of a greater number of people will lead to more defaults and more incarceration of the poor, and prevent judges from using their discretion to ensure a just result.

Thank you for considering the views of the CBA Sections.

Yours truly,

(original signed by Tamra Thomson for Daniel A. MacRury and Aimée E. Craft)

Daniel A. MacRury
Chair, National Criminal Justice Section

Aimée E. Craft
Chair, National Aboriginal Law Section

¹ The Supreme Court of Canada has held that such consideration is required: See, *R. v. Gladue*, [1999] 1 S.C.R. 688.